

Records Management

Jeffry R. Gittins, Esq.

Smith Hartvigsen, PLLC

Utah Revised Nonprofit Corporation Act
Title 16, Chapter 6a of the Utah Code
Sections 16-6a-1601 through -1610

Utah Revised Business Corporation Act
Title 16, Chapter 10a of the Utah Code

1. What records does the Company have to keep?

(1) “Minutes of all meetings of its members and board of directors”

(2) “A record of all actions taken by the members or board of directors without a meeting”

(3) “A record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the nonprofit corporation”

(4) “A record of all waivers of notices of meetings of members and of the board of directors or any committee of the board of directors”

(5) “Appropriate accounting records”

1. What records does the Company have to keep?

(6) Shareholder list

“A record of its members in a form that permits preparation of a list of the name and address of all members:

- in alphabetical order, by class; and
- showing the number of votes each member is entitled to vote”

Spreadsheet or database advisable

2. In what form should the records be kept?

“A nonprofit corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.”

- Hard copies of documents
- Scanned copies of documents
- Spreadsheet or word processing programs
- Not just recordings

3. What records should the Company keep?

EVERYTHING!!!



“Get it in writing” only works if you keep a copy of the writing.

Consider scanning and keeping electronic files rather than keeping all paper copies.

4. What records does the Company have to keep “on hand”?

“A nonprofit corporation shall keep a copy of each of the following records at its principal office:

1. Its articles of incorporation
2. Its bylaws
3. Resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members
4. The minutes of all members’ meetings for a period of three years
5. Records of all action taken by members without a meeting, for a period of three years
6. All written communications to members generally as members for a period of three years
7. A list of the names and business or home addresses of its current directors and officers
8. A copy of its most recent annual report delivered to the division [of corporations] under Section 16-6a-1607
9. All financial statements prepared for periods ending during the last three years that a member could have requested under Section 16-6a-1606”

5. Who has the right to inspect or copy records?

(1) Members

- Those identified as members by Articles of Incorporation, Bylaws, or resolution of board
- Shareholders
- Only voting members (unless otherwise provided by Bylaws)

(2) Directors

- In most water companies, directors are members/shareholders

(3) A member's or director's agent or attorney

6. When and where can records be inspected?

- During regular business hours
- At the Company's principal office
- If the member gives the Company written demand at least five days before he/she wishes to inspect or copy the records

7. When is a member entitled to inspect or copy other Company records?

- The demand is made “in good faith”
- The demand is made “for a proper purpose”
 - “A purpose reasonably related to the demanding member’s interest as a member”
- The demand “describes with reasonable particularity”:
 - The records the member wishes to inspect or copy
 - The purpose for which the member wishes to inspect or copy the records
- The records the member wishes to inspect are directly connected to the described purpose
- A member may not use the information obtained for any other purpose other than the purpose identified in the demand

8. Limitations of Inspection Right

- “The right of inspection . . . may not be abolished or limited by the articles of incorporation or bylaws.”
- If a member is in litigation with the Company, the member has the same right to inspect Company records as any other litigant
- A court has power to compel production of Company records for examination


9. Can the Company charge for copies?

- A member has the right to receive “copies made by photographic, xerographic, electronic, or other means”
- The Company may impose “a reasonable charge” for the cost of labor and material for copies of documents
- The charge “may not exceed the estimated cost of production and reproduction of the records”
- Exception: The Company may not charge for copies of financial statements

10. Financial Statements

- The following documents “that show in reasonable detail the assets and liabilities and results of operation” of the Company:
 - The Company’s “most recent annual financial statements, if any”
 - The Company’s “most recently published financial statements, if any”
- A member must make a written request
- The Company must mail the documents to the member no later than 15 days after receiving the request

11. Shareholder Lists

- Prior to shareholders' meeting, the Company must prepare a list of shareholders entitled to vote
- The list must 
 - Be alphabetical
 - Show the address of each shareholder
 - Show the number of votes each shareholder is entitled to vote
- The list must be available for inspection by any member entitled to vote:
 - At the Company's principal office the earlier of 10 days before the meeting or 2 business days after notice of the meeting is given
 - At the meeting

11. Shareholder Lists

Unless approved by the Company's board, a shareholder list cannot be:

- “Used for any purpose unrelated to a member’s interest as a member”
- “Used to solicit money or property unless the money or property will be used solely to solicit the votes of the members in a [Company] election”
- “Used for any commercial purpose”
- “Sold to or purchased by any person”

12. Court-Ordered Inspection

- A member who has made a proper request but has been denied access to Company records may petition a court to order the Company to allow the member to inspect or copy the records requested
- If the court orders inspection, the court:
 - Shall order the Company to pay the member's costs, including attorney fees (unless the Company proves that it refused inspection in good faith because it had a reasonable basis for doubt about the member's right to inspection)
 - May order the Company to pay for any damages the member incurred
 - May order the Company to pay the member's inspection and copying costs
 - May order "any other remedy provided by law"

Contact Information



Jeffry Gittins

Smith Hartvigsen PLLC

801-413-1600

jgittins@smithlawonline.com

Blog: www.utahwaterrights.blogspot.com